

FINAL BILL REPORT

HB 2499

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Synopsis as Enacted

Brief Description: Addressing the materials required to accompany notice under the Washington business corporation act.

Sponsors: By Representatives Pedersen and Rodne.

House Committee on Judiciary
Senate Committee on Judiciary

Background:

State Notice Rules.

The Washington Business Corporation Act (WBCA) authorizes various methods by which required notices and accompanying materials may be delivered to shareholders and directors, and identifies the requirements that must be satisfied for notice to be effective.

Except in the case of a meeting of the board of directors, which may be communicated orally, notice to shareholders and directors and accompanying materials must be provided in the form of a "record," meaning that information must be inscribed on a tangible medium or contained in an electronic transmission.

In certain circumstances, the WBCA requires additional materials to accompany a meeting notice to directors or shareholders. For example, when the subject of the meeting involves an amendment to the articles of incorporation, a copy of the proposed amendment must accompany the meeting notice.

An electronic transmission of notice and accompanying materials is effective only if the recipient shareholder or director has "opted-in" by giving affirmative consent to receive electronic notifications. A corporation may provide a notice and accompanying materials to those who opt-in by posting information on an electronic network and delivering to the shareholder or director a separate record of the posting, including comprehensive instructions on obtaining access to the posting on the electronic network.

Companies with a large or frequently changing shareholder base may encounter difficulty in obtaining consent from each shareholder for electronic transmission of information. As a result, these companies typically rely on physical delivery methods to provide notice and required additional materials to shareholders.

Public companies commonly deliver via mail physical copies of notices to shareholders and additional materials required under state law with proxy statements required by the Securities and Exchange Commission (SEC).

Federal "E-proxy" Rules.

In July of 2007, the SEC adopted mandatory "e-proxy" rules defining the manner in which proxy materials for securities registered under Section 12 of the Securities Exchange Act of 1934 must be provided to shareholders. According to the SEC's rule summary, the e-proxy amendments are intended to enhance the ability of investors to make informed voting decisions and to expand use of the Internet to lower the cost of proxy solicitation.

Under the new rules, effective January 1, 2008, for "large accelerated filers" and January 1, 2009, for all other filers, a company may choose to provide notice to shareholders according to the "notice only" or "full set delivery" options. Both options require companies to post proxy materials on a publicly accessible website and to provide paper copies of the posted material upon shareholder request.

Full Set Delivery.

The "full set delivery" option allows a company to continue the traditional method of delivering paper copies of proxy materials to shareholders, but also requires the company to send notice and post the proxy materials on an Internet website.

Notice Only.

The "notice only" option requires a company to post proxy materials on an Internet website and send a notice to shareholders to inform them of the availability of the materials on the Internet.

The content of the notice of Internet availability required under both options is strictly limited to the information allowed in the e-proxy rules, except that the notice may be incorporated or combined with a meeting notice required under state law.

Implications for Washington Companies.

A Washington public company choosing the "notice only" option for delivery of proxy materials may continue to engage in the practice of combining required state law meeting notices with the federally required proxy statement. However, it is not clear that any additional materials required to accompany a meeting notice under the WBCA may be included with the meeting notice and proxy statement under the new SEC e-proxy rules.

A Washington company may be required to continue to rely on mailing physical copies of notice and accompanying additional materials to ensure compliance with the WBCA's notice requirements, since electronic notice is effective under the WBCA only to shareholders and directors who have given affirmative consent to electronic transmissions.

Summary:

A public company may satisfy its requirement under the Washington Business Corporation Act to accompany a notice to shareholders with certain additional material by (1) posting the additional material on an electronic network at or prior to the time the notice is delivered to the shareholders, and (2) delivering to the shareholders a separate record of the posting, together with comprehensible instructions regarding how to access the posting on the electronic network.

The electronic posting is effective to satisfy the company's requirements to provide the additional material with a notice, whether or not a shareholder has consented to receive notice by electronic transmission.

A public company electing to post required additional materials on an electronic network must provide a copy of the additional materials in a tangible medium to any shareholder entitled to such notice who makes a request.

Votes on Final Passage:

House	95	0
Senate	49	0

Effective: June 12, 2008